

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice.

TRIAL/IAS PART 2
NASSAU COUNTY

JACOB BURBAR,

Plaintiff,

ORIGINAL RETURN DATE: 01/30/13

SUBMISSION DATE: 01/30/13

Index No. 12790/12

-against-

INCORPORATED VILLAGE OF GARDEN CITY, THE MOTION SEQUENCE #1
COUNTY OF NASSAU, POLICE OFFICERS
JOHN DOE#1 ND JOHN DOE #2,

Defendants.

The following papers read on this motion:

Notice of Motion.....	1
Affidavit.....	2

Plaintiff's motion for an order granting leave to amend and supplement the summons and complaint¹ is granted. The Incorporated Village of Garden City, although submitting an affidavit in response to the motion, takes no position as to the relief sought but submits that as new claims are alleged in the amended complaint, it should be permitted to respond accordingly.

"In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (*RCLA, LLC v. 50-09 Realty, LLC*, 48 A.D.3d 538 [2d Dept. 2008]).

¹As there are new parties being added, a Supplemental Summons (see CPLR 305(a)) and Amended Complaint is appropriate.

Plaintiff is directed to serve and file the Supplemental Summons and Amended Complaint within twenty (20) days from the date hereof.

“When an amended complaint has been served, it supersedes the original complaint and becomes the only complaint in the case (citations omitted). Thus, defendants' original answer has no effect and a new responsive pleading must be substituted for the original answer (citation omitted)” (*St. Lawrence Explosives Corp. v Law Bros. Contr. Corp.*, 170 A.D.2d 957 [4th Dept. 1991]).

To insure the expeditious completion of disclosure in this action, a Preliminary Conference shall be held. All parties are directed to appear on March 28, 2013, at 9:30 a.m. in the Preliminary Conference area, lower level of this courthouse, to obtain and fill out a Preliminary Conference Order. Movant is directed to serve a copy of this order upon all parties forthwith upon receipt of a copy of same from any source and to thereafter provide proof of such service upon chambers.

This decision constitutes the order of the court.

Dated: February 1, 2013


HON THOMAS P. PHELAN
THOMAS P. PHELAN, J.S.C.

Attorneys of Record:

Flanzig & Flanzig, LLP
Attention: Daniel Flanzig, Esq.
323 Willis Avenue
P.O. Box 669
Mineola, NY 11501-0669

Cullen and Dykman LLP
Attention: Cynthia A. Augello, Esq.
Attorneys for Defendant
Incorporated Village of Garden City
Garden City Center
100 Quentin Roosevelt Boulevard
Garden City, NY 11530-4850

Office of the County Attorney
County of Nassau
County Executive Building
One West Street
Mineola, NY 11501

Garden City Police Department
349 Stewart Avenue
Garden City, NY 11530

Nassau County District Attorney's Office
262 Old Country Road
Mineola, NY 11501